

1 Richard A. Jones (SBN: 135248)  
2 COVINGTON & BURLING  
3 One Front Street  
4 San Francisco, CA 94111  
5 TEL: (415) 591-6000  
6 FAX: (415) 591-6091  
7 E-MAIL: [rjones@cov.com](mailto:rjones@cov.com)

8 E. Edward Bruce (*pro hac vice pending*)  
9 William D. Iverson (*pro hac vice*)  
10 Joshua D. Wolson (*pro hac vice*)  
11 COVINGTON & BURLING  
12 1201 Pennsylvania Avenue N.W.  
13 Washington, D.C. 20004  
14 TEL: (202) 662-6000  
15 FAX: (202) 662-6291  
16 E-MAIL: [ebruce@cov.com](mailto:ebruce@cov.com)  
17 [wiverson@cov.com](mailto:wiverson@cov.com)  
18 [jwolson@cov.com](mailto:jwolson@cov.com)

19 Attorneys for Applicant Microsoft Corp.

20 UNITED STATES DISTRICT COURT  
21  
22 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
23  
24 SAN JOSE DIVISION

25 *In re*  
26  
27 Application Of  
28  
29 MICROSOFT CORPORATION,  
30  
31 Applicant.

Case No. 06-80038 JF (PVT)

**DECLARATION OF JOSHUA D. WOLSON**

Date: TBD  
Time: TBD  
Before: Magistrate Patricia Trumbull  
Place: Courtroom Five, Fourth Floor

1 Joshua D. Wolson declares as follows:

2 1. I am an attorney for the law firm of Covington & Burling, counsel for  
3 Microsoft Corp. in the above-captioned action. I make this declaration based on personal  
4 knowledge and facts acquired in the course of my duties.

5 2. From August 29-31, 2005, Sun Microsystems conducted a three-day  
6 evaluation of technical documentation containing Interoperability Information for use with work  
7 group server operating system products, which Microsoft made available pursuant to a March  
8 2004 Decision of the European Commission ("Commission"). This evaluation was of the  
9 August 2005 version of the documentation. In response to a request from the Commission, on  
10 September 20, 2005, Sun submitted to the Commission a report on Microsoft's documentation  
11 (the "Sun Report") (attached at Exhibit A).

12 3. At the same time, the Commission asked the OTR Group ("OTR") to  
13 evaluate the same August 2005 version of the documentation. OTR had previously evaluated a  
14 December 2004 version of the documentation, submitting a report on June 11, 2005 (the "First  
15 OTR Report"), to which Microsoft had responded by letter on July 8, 2005. In response to the  
16 Commission's request, OTR submitted a report on September 28, 2005 (the "Second OTR  
17 Report") (attached at Exhibit B).

18 4. Documents recently disclosed to Microsoft reveal that between Sun's  
19 review of Microsoft's documentation at the end of August 2005 and September 28, 2005, when  
20 OTR submitted the Second OTR Report, the Commission arranged for Sun to contact OTR  
21 directly to discuss "Sun's findings in Redmond before the 27th September in order to gain some  
22 time." (Burt Declaration Exhibit H) (submitted in support of Microsoft Application for  
23 discovery under 28 U.S.C. § 1782). The call may have occurred on September 20, 2005.  
24 Microsoft does not know what Sun documents, if any, were transmitted to OTR directly by Sun  
25 or by the Commission after receiving the documents from Sun.

26 5. An analysis of the Second OTR Report and the Sun Report reveals that  
27 there are very substantial similarities between the two. These similarities extend not only to the  
28 overall points made, but also to the explanations given, the examples provided, and the specific

1 language used. In some cases, as in the example of DRSUAPI, the two reports use virtually  
2 identical language. In other cases, as with the explanation of dependencies, both reports use the  
3 same turns of phrase to describe general concepts.

4 6. The table appended as Exhibit C shows the similarities between the  
5 Second OTR Report and the Sun Report. In each case, the relevant portion of the Second OTR  
6 Report is quoted in its entirety. Emphasis has been supplied to highlight the similar words and  
7 phrases used in the two reports. The table includes virtually all of the content of the Second  
8 OTR Report that does not repeat information from the First OTR Report or directly respond to  
9 Microsoft's letter of 8 July 2005.

10 7. Attached to this Declaration at Exhibits D and E, respectively, are true  
11 and correct copies of letters sent on March 18, 2006, by William D. Iverson of Covington &  
12 Burling to James Penrod, counsel for Sun Microsystems, Inc., and Daniel Wall and Christopher  
13 Yates, counsel for Oracle Corp.

14 8. Attached to this Declaration at Exhibit F is a true and correct copy of a  
15 decision of the European Court of First Instance, Joined Cases T-67/00, T-68/00, T-71/00, and  
16 T-78/00, JFE Eng. Corp. et al.

17 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the  
18 foregoing is true and correct. Dated March 22, 2006.

19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
  
\_\_\_\_\_  
Joshua D. Wolson